

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) 3:09-CR-00210-B-1  
 )  
JESSE WILLIAM MCGRAW, )  
 )  
Defendant. )

REVOCATION HEARING  
BEFORE THE HONORABLE JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE  
JANUARY 11, 2018

A P P E A R A N C E S

For the Government:

UNITED STATES ATTORNEY'S OFFICE  
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214/659-8600  
BY: CANDINA HEATH

For the Defendant:

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BY: MATTHEW ARNOLD

COURT REPORTER: SHAWNIE ARCHULETA, TX CCR No. 7533  
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proceedings reported by mechanical stenography,  
transcript produced by computer.

SHAWNIE ARCHULETA, CSR/CRR  
FEDERAL COURT REPORTER - 214.753.2747

1 (In open court at 2:14 p.m.)

2 THE COURT: Okay. This is a supervised  
3 release revocation, U.S. v. Jesse William McGraw,  
4 3:09-CR-210.

5 For the government.

6 MS. HEATH: Candy Heath for the  
7 government.

8 MR. ARNOLD: Matthew Arnold for the  
9 defendant.

10 THE COURT: All right. Good afternoon,  
11 Mr. McGraw.

12 THE DEFENDANT: Good afternoon, ma'am.  
13 How are you?

14 THE COURT: I'm pretty good. How are you?

15 THE DEFENDANT: I'm fine. Thank you so  
16 much.

17 THE COURT: We are here today because  
18 there's been a petition -- well, excuse me.

19 (Pause in the proceedings.)

20 THE COURT: Please be seated. Try that  
21 again.

22 I have three different documents,  
23 Mr. McGraw, that charge you with violations of your  
24 supervised release. So I want to talk about each  
25 one and see what you and your counsel's position is.

1           Have you had a chance to talk to him about  
2 these petitions?

3           THE DEFENDANT: Yes. Yes, ma'am, I have.

4           THE COURT: The first petition I'm looking  
5 at is Document 121 in the docket. It's signed by  
6 this Court, November 15th, 2017.

7           Are you familiar with this petition?

8           THE DEFENDANT: Yes, ma'am, I am.

9           THE COURT: Have you had a chance to  
10 thoroughly review these allegations with your  
11 counsel?

12          THE DEFENDANT: Yes, I have, ma'am.

13          THE COURT: Do you understand what you  
14 have been alleged to have done?

15          THE DEFENDANT: Yes, ma'am, I do.

16          THE COURT: You have the right to have  
17 this full document read to you in open court, or you  
18 can waive that right.

19          How do you wish to proceed?

20          THE DEFENDANT: I would prefer to waive  
21 that.

22          THE COURT: Then I have a supplemental  
23 petition, Document 132, which adds an allegation --  
24 again, these are both Form 12(c)s, as we call them,  
25 signed by the Court on December 18th. Has to do

1 with the allegation you left the judicial district  
2 without permission in violation of your mandatory  
3 condition.

4 Have you had a chance to review that  
5 carefully?

6 THE DEFENDANT: Yes, ma'am, I have.

7 THE COURT: You have to let me finish.  
8 You have read this?

9 THE DEFENDANT: Yes.

10 THE COURT: You understand it?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: You have a right to have this  
13 document read in open court, or you can waive it.

14 How do you wish to proceed?

15 THE DEFENDANT: I prefer to waive it.

16 THE COURT: Last, I have a motion to  
17 revoke supervised release -- that's Document 133 --  
18 in which the government proceeds under  
19 18 U.S.C. Section 3583 to revoke your supervised  
20 release based upon a number of allegations separate  
21 and apart, as I understand it, from what's in these  
22 first two petitions.

23 Is that right, Ms. Heath, these are  
24 separate allegations?

25 MS. HEATH: Yes, Your Honor.

1 THE COURT: Have you had a chance to look  
2 this over?

3 THE DEFENDANT: Yes, ma'am. Yes, ma'am, I  
4 have.

5 THE COURT: And do you understand this  
6 document?

7 THE DEFENDANT: Absolutely, I do.

8 THE COURT: Understand all the  
9 allegations?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: And have you had a chance to  
12 talk again thoroughly with your counsel about this?

13 THE DEFENDANT: Yes. Yes.

14 THE COURT: And just to clarify, I know,  
15 Mr. Arnold, these were newer allegations.  
16 Essentially this last one from the government was  
17 filed one day after the other. But we had some  
18 concern last time that you hadn't had a chance to  
19 review them. I'm assuming now, three weeks into it,  
20 you have had a chance to review the government's  
21 allegations.

22 MR. ARNOLD: Yes, Your Honor.

23 THE COURT: Okay. So you are ready to  
24 defend those today?

25 MR. ARNOLD: Yes, Your Honor.

1 THE COURT: Okay. So now that we've --  
2 again, if I haven't said this, Mr. McGraw, I can  
3 read this full document that the government filed,  
4 Document 133, here to you in open court, or you can  
5 waive that right. How do you wish to proceed?

6 THE DEFENDANT: I prefer to waive that,  
7 please.

8 THE COURT: Okay. So you said you talked  
9 to your lawyer about the allegations in Document  
10 121, the 12(c); Document 132, the supplemental  
11 12(c); and Document 133, the government's motion to  
12 revoke your supervised release.

13 And I'm going to turn, then, directly to  
14 Mr. Arnold. Do you agree you have talked to him  
15 about all of these?

16 MR. ARNOLD: Yes, Your Honor.

17 THE COURT: How does he wish to plead to  
18 these allegations?

19 MR. ARNOLD: He wishes to plead true, Your  
20 Honor.

21 THE COURT: All right. Mr. McGraw, let  
22 me, if I could swear you in, raise your right hand.

23 (The Defendant was sworn.)

24 THE DEFENDANT: Yes, ma'am, I swear.

25 THE COURT: Do you agree, Mr. McGraw, that

1 you plead true to each of the allegations contained  
2 in these three documents we have just been through?

3 THE DEFENDANT: Yes, ma'am, I do.

4 THE COURT: So with that, the Court finds  
5 that there's a preponderance of the evidence to find  
6 the allegations and the violations occurred, and I  
7 guess the next question, then, is, what's the proper  
8 disposition of this hearing?

9 And I will turn to you first, Mr. Arnold,  
10 for your position on that.

11 MR. ARNOLD: Your Honor, since his  
12 criminal history category is I and the violation  
13 grade is C, we're looking at the guideline range of  
14 3 to 9 months.

15 THE COURT: Right.

16 MR. ARNOLD: Mr. McGraw understands that  
17 he messed up, that he was -- when he was initially  
18 released and put on supervised release, he was doing  
19 very well. He's no longer in the hacking game,  
20 which is what, you know, got him in trouble with  
21 this case to begin with.

22 He is a man of increasingly deep religious  
23 faith. As you can see from the allegations that the  
24 government's made, he had access and posted some  
25 stuff on social media, so thus he had access to

1 computers and stuff like that. You can see that  
2 just from the content that he puts on there that he  
3 has -- feels moved to express his religious views  
4 freely. And it appears that in a moment of  
5 religious passion, he felt like he needed to do  
6 these actions that basically violated the Court's  
7 supervised release.

8 I've had discussions with Mr. McGraw, you  
9 know, on how immature that is an expression of his  
10 faith and how he really needs to try to, in essence,  
11 render under Caesar the next three years what is  
12 Caesar's so he can relocate if that's what he wants  
13 to do. He understands that now, and he's expressed  
14 a willingness on his part to go ahead and tow the  
15 line.

16 THE COURT: Okay.

17 MR. ARNOLD: So I would hope that the  
18 Court would sentence him on the lower range of the  
19 guidelines.

20 THE COURT: Thank you very much.

21 Mr. McGraw, what would you like to say?

22 THE DEFENDANT: First and foremost, I do  
23 want to apologize. It is right what he said to  
24 render under Caesar what is Caesar's. I am guilty,  
25 and I accept responsibility for it. Whatever is



1 true and just in your eyes, then that's what's going  
2 to happen.

3 Again, I do take the responsibility. I  
4 have to do what is required of me, and I didn't do  
5 that. So it's in your court, ma'am.

6 THE COURT: All right. All right. If  
7 you-all will step aside, I would like to hear from  
8 the government. Ms. Heath has been involved with  
9 this as long as Mr. McGraw, so I would like to hear  
10 her perspective on all of this.

11 MS. HEATH: Your Honor, the only thing I  
12 disagree with on the presentation is that  
13 Mr. McGraw's decision to violate the conditions was  
14 not necessarily in a moment of religious passion.  
15 From the information we have received through  
16 Mr. McGraw's own postings, as well as some of his  
17 conversations from the jail, is that he had planned  
18 this while he was still in custody, while he was in  
19 transition from Bureau of Prisons to the halfway  
20 house, while he was in the halfway house. He had  
21 planned to not only post these things, open  
22 accounts, he had planned to leave the country. So  
23 it was always his intent not to stay in the country,  
24 not to abide by his conditions of supervised  
25 release.

1           So we would ask the Court to sentence him  
2     in the mid to upper range of the time available.  
3     And then, when re-released on supervised release, to  
4     impose a condition to include at least some sort of  
5     electronic monitoring, GPS locator device for at  
6     least as long as it takes probation to be  
7     comfortable with the fact that he's going to remain  
8     within a particular location, if not within the city  
9     that he has been restricted.

10           THE COURT: All right. Thank you. Come  
11    on back over. Mr. Arnold, what's your position on  
12    all of that? I would like to hear your response to  
13    all of that.

14           MR. ARNOLD: My client has indicated to me  
15    that he did, you know, plan on doing this for some  
16    time, and he understands that he can't do that. And  
17    I think that some type of electronic monitor would  
18    be appropriate, and I think my client would agree to  
19    that.

20           THE COURT: All right. Well, I'm pleased  
21    to see, today, Mr. McGraw, that at least your  
22    attitude -- and I hate to sound patronizing -- but  
23    your maturity level seems to have changed a bit for  
24    the positive since the last time I saw you. My  
25    concern last time was just the whole underlying

1 crime didn't really seem to have any motivation  
2 other than just hurting people, and I think I said  
3 that to you during the sentencing.

4 I think if I consider all of the  
5 appropriate 3553 factors, and I am, that six months  
6 in custody is fair, not more than it should be to  
7 carry out the purposes of the sentencing statutes as  
8 they apply in this context, and that would leave us  
9 with 30 months supervised release. Is that right?  
10 I've got 36 months minus --

11 USPO: Yes, Your Honor.

12 THE COURT: All right, thank you. So 30  
13 months supervised release with six months in  
14 custody, and then I will add the electronic  
15 monitoring requirement.

16 And Mr. McGraw, you have a right to appeal  
17 this sentence. If you decide to appeal, you are  
18 entitled to court-appointed counsel to represent you  
19 for the appeal. If you want to appeal, it must be  
20 timely. You must file a notice of appeal within 14  
21 days of the date the Court enters its judgment in  
22 this case.

23 Any questions?

24 THE DEFENDANT: No, ma'am. No questions.

25 THE COURT: Anything from Mr. Arnold?

1 MR. ARNOLD: No, Your Honor.

2 THE COURT: Ms. Heath?

3 MS. HEATH: No, Your Honor.

4 THE COURT: Probation?

5 USPO: Your Honor, on the electronic  
6 monitoring time period, is there a specific time?

7 THE COURT: In what regard?

8 USPO: To the length?

9 THE COURT: I think it should be  
10 throughout the rest of the supervised release. Now,  
11 I will be open to, because I know this is somewhat  
12 of a burden on probation, to some consideration that  
13 it's going fine, let's go ahead and take him off of  
14 it, and I will look for that. And if probation  
15 recommends it, I will go along with it. But for  
16 right now, I hate to do an arbitrary period of time,  
17 not knowing how this is going to go.

18 USPO: Okay.

19 THE COURT: All right. So let's just  
20 leave it open, but you can come to me when you think  
21 it's time to terminate it.

22 USPO: Understood.

23 THE COURT: All right. Thank you.

24 If there's nothing else, then Mr. McGraw  
25 is remanded to federal custody with all of the same

1 conditions of supervised release plus the additional  
2 one he has previously been on.

3 Let's move on to the final case.

4 (Court in recess at 2:27 p.m.)  
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C E R T I F I C A T E

I, Shawnie Archuleta, CCR/CRR, certify  
that the foregoing is a transcript from the record  
of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees  
format comply with those prescribed by the Court and  
the Judicial Conference of the United States.

This 17th day of August 2018.

s/Shawnie Archuleta  
Shawnie Archuleta CCR No. 7533  
Official Court Reporter  
The Northern District of Texas  
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My CSR license expires: December 31, 2018

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